

**In The United States District Court
for the Northern District of Illinois
Eastern Division**

FILED-ED4
10:27 PM 27 SEP 2002
CLERK
U.S. DISTRICT COURT

THE MONOTYPE CORPORATION,
a Delaware corporation,

Plaintiff,

vs.

RED HAT, INC.,
a Delaware corporation,

Defendant.

No. 02 C 3713

Judge Nordberg

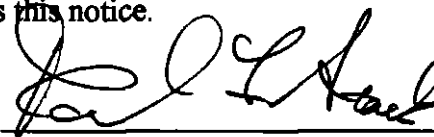
Magistrate Judge
Geraldine Soat Brown

DOCKETED
OCT 03 2002

NOTICE OF MOTION

TO: Alan L. Unikel
Christopher E. Paetsch
Seyfarth Shaw
55 East Monroe Street
Chicago, Illinois 60603

PLEASE TAKE NOTICE that on October 2, 2002, at 9:45 a.m., the undersigned shall appear before the Honorable Magistrate Judge Geraldine Soat Brown in Courtroom 1812 in the Federal Courthouse at 219 S. Dearborn St., Chicago, Illinois 60604, and then and there present **RESPONSE OF PLAINTIFF TO RED HAT'S MOTION TO COMPEL AND FOR SANCTIONS AND PLAINTIFF'S MOTION FOR SANCTIONS**, a copy of which accompanies this notice.


One of the Attorneys for Plaintiff

Paul F. Stack
Robert A. Filpi
Stack & Filpi Chartered
140 S. Dearborn St. Suite 411
Chicago, Illinois 60603
(312)782-0690

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused the foregoing notice together with the motion referred to therein to be served upon the attorneys for defendant on September 27, 2002, by the means set forth below, addressed as follows:

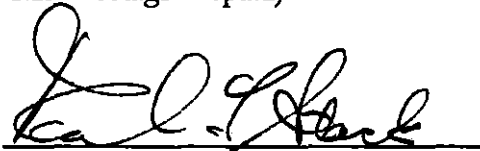
Alan L. Unikel
Christopher E. Paetsch
Seyfarth Shaw
55 East Monroe Street
Chicago, Illinois 60603

(By Hand Delivery)

and

Jonathan D. Sasser
Moore & Van Allen PLLC
P.O. Box 26507
Raleigh, North Carolina 27611

(By United States Mail with First
Class Postage Prepaid)

A handwritten signature in black ink, appearing to read "Paul F. Stack", written over a horizontal line.

Paul F. Stack

differences they are unable to reach an accord, or (2) counsel's attempts to engage in such consultations were unsuccessful due to no fault of counsel's. Where the consultation occurred, this statement shall recite, in addition, the date, time and place of such conference, and the names of all parties participating therein. Where counsel was unsuccessful in engaging in such consultation, the statement shall recite the efforts made by counsel to engage in consultation.

3 The motion of RED HAT contains no such statement. It has a mere conclusory statement that "Red Hat certifies that it has attempted to resolve all of the issues raised in this motion, but Monotype has not responded to Red Hat's efforts in this regard."

4. Accordingly, the motion of RED HAT to compel and for sanctions is barred by Local Rule 37.2 and must be denied. Furthermore, since motion practice directed to discovery has been the subject of considerable abuse such as RED HAT's motion, which abuse was intended to be corrected by adoption of Local Rule 37.2, this Local Rule must be strictly enforced for the protection of the court as well as for the protection of litigants. Accordingly, MONOTYPE moves for entry of sanctions against RED HAT for bringing a motion which it is absolutely barred from bringing by Local Rule 37.2.

5. Further, the suggestion that MONOTYPE is not attempting to resolve discovery disputes is false. Counsel for MONOTYPE is currently addressing numerous issues regarding outstanding discovery raised in a six page letter dated September 6, 2002, from Christopher Paetsch, an attorney for RED HAT. Additional information has been located and will be provided by MONOTYPE in response to such letter, but not all of the information sought will be produced because it is MONOTYPE's position that certain requests of RED HAT do not seek relevant information or information which is likely to lead to relevant information. Counsel for MONOTYPE has never discussed discovery with Charles Chejfec, the attorney who signed RED HAT's motion to compel and for sanctions and has no idea upon what factual basis Mr. Chejfec has made any statement regarding attempts to resolve discovery disputes in this proceeding.

6. To date, MONOTYPE has timely filed answers and objections to RED HAT's interrogatories and has timely produced nearly 2,000 documents in response to RED HAT's requests to produce. Any claim that MONOTYPE has not fully complied with discovery requests is utterly frivolous.

WHEREFORE, MONOTYPE requests that Red Hat's MOTION TO COMPEL AND FOR SANCTIONS be denied and that MONOTYPE's Motion for Sanctions be granted, and that MONOTYPE be awarded its fees for responding to a motion barred by Local Rule 37.2.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Paul F. Stack", written over a horizontal line.

One of the attorneys for Plaintiff

Paul F. Stack
Robert A. Filpi
STACK & FILPI CHARTERED
Suite 411
140 South Dearborn Street
Chicago, Illinois 60603-5298
(312) 782-0690
(312) 782-0936 facsimile